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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|----------------------|
| 10/708,808 | 03/26/2004 | John R. Mitchell | 04M1700 | 2807 |
| 24234 | 7590 | 05/02/2006 | EXAMINER | |
| SIMMONS, PERRINE, ALBRIGHT & ELLWOOD, P.L.C. THIRD FLOOR TOWER PLACE 22 SOUTH LINN STREET IOWA CITY, IA 52240 | | | | WIEKER, AMANDA FLYNN |
| ART UNIT | | PAPER NUMBER | | |
| | | 3743 | | |

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------|-------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/708,808 | MITCHELL, JOHN R. |
| | Examiner | Art Unit |
| | Amanda F. Wieker | 3743 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 March 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-6 and 19-21 is/are allowed.
 6) Claim(s) 7 and 14-18 is/are rejected.
 7) Claim(s) 8-13 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 26 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required if the application is allowed.

Claim Objections

2. Claim 16 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 7. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiGiulio in view of Perrault.

DiGiulio discloses a system for maintaining a child's feet in a predetermined therapeutic arrangement, the system comprising:

a splint comprising:

a rigid elongated member (2) comprising a left end and a right end;
a shoe engaging plate (90) adjustably coupled to said elongated member at each of said left end and said right end;
a right end adjustment mechanism (see Figure 2) disposed between said right shoe engaging plate (90) and said elongated member (2), said right end adjustment mechanism for making angular adjustments (see col. 7);
a left end adjustment mechanism (see Figure 2) disposed between said left shoe engaging plate (90) and said elongated member (2), said left end adjustment mechanism for making angular adjustments (see col. 7);

The system includes a shoe coupled to each of said shoe engaging plates at each end of the splint assembly, not by a threaded elongated member, but by a quick release mechanism. DiGiulio specifies that any type of shoe can be used with the system, but does not specify the insole of the shoe to include a single piece insole member.

Perrault discloses a shoe for maintaining a user's foot in a predetermined therapeutic position. Perrault discloses a one-piece removable inner foot and heel cradling insole insert, which is sized and shaped and configured to provide full heel support, and to support the foot, while taking up a limited amount of space within the shoe. The insole has a flat foot side, and a pair of opposing insole sidewalls and an insole heel support section. Absence of material (at 22) in the heel support section permits visual inspection from both sides (through 22, to left and right) of a patient's heel.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the system for maintaining a child's feet in a predetermined therapeutic

arrangement as disclosed by DiGiulio, wherein the shoe includes a one-piece insole, as taught by Perrault, to support the foot while taking up a limited amount of space within the shoe.

5. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiGiulio in view of Perrault and in view of U.S. Patent Number 2,585,342 to Morgan.

DiGiulio in view of Perrault disclose the previously described system for maintaining a child's feet in a predetermined therapeutic arrangement. DiGiulio specifies that the length of the elongated splint be adjustable, but does not specify that the splint include a plurality of bars joined together by a threaded member.

Morgan discloses a system for maintaining a child's feet in a predetermined therapeutic arrangement, wherein the system comprises a plurality of bars (10, 12) joined together by threaded bolts to allow precise adjustment of the splint assembly. The system of bars and bolts comprise a shoe separation setting device with first (14 left) and second (14 right) setscrews.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the system for maintaining a child's feet in a predetermined therapeutic arrangement disclosed by DiGiulio in view of Perrault, wherein the system includes a plurality of bars joined by bolts, as taught by Morgan, to allow precise adjustment of the splint assembly.

Allowable Subject Matter

6. Claims 1-6 and 19-21 are allowed.
7. Claims 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 06 March 2006 have been fully considered but they are not persuasive.
9. On pages 13-14 Applicant argues that the Perrault reference does not provide full heel support. The examiner disagrees. The insole fully supports at least the bottom surface of the heel. The Perrault device does not provide ankle support, as claimed in claim 8, but does meet the limitations of claim 7.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amanda F. Wieker
Examiner

Art Unit 3743

afw

Henry Bennett
Supervisory Patent Examiner
Group 3700